



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 177165

PRELIMINARY RECITALS

Pursuant to a petition filed on October 4, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department regarding Medical Assistance (MA), hearings were held on November 10, 2016 and December 20, 2016, by telephone.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of MA benefits in the amount of \$753.95 for the period of February 1, 2015 – June 30, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By:

[REDACTED]
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On December 30, 2014, the Petitioner completed a BC+ renewal. She reported a household of three including herself, another adult [REDACTED] and their minor child. She reported a new address. She reported employment at [REDACTED]. She reported [REDACTED]'s SSI benefits. The case was pending for verification of address, shelter expense and employment. The due date for verification was January 29, 2015.
3. On January 15, 2015, the agency received pay statements for the Petitioner for the pay periods of November 23 – December 6, 2014, December 21, 2014 – January 3, 2015 and January 4 – 17, 2015.
4. On January 16, 2015, the agency issued a Notice of Decision to the Petitioner at her address on [REDACTED] informing her that she and her daughter were approved for BC+ benefits with no monthly premium effective February 1, 2015. The notice informed her that this was based on gross household income of \$1,637.26 for December, 2014 and \$1,649.26 for January, 2015. The notice informed her that this was based on her earned income of \$387.20 every other week and [REDACTED]'s SSI benefits. The notice also informed the Petitioner of the requirement to report to the agency by the 10th day of the next month if her gross monthly household income exceeded \$1,649.17. In addition, the notice advised the Petitioner of the right to appeal the agency's determination by filing a request for a hearing with the Division of Hearings and Appeals by March 19, 2015.
5. On September 11, 2015, the agency received a wage discrepancy alert for the Petitioner. The Petitioner's employer reported 1st quarter 2015 gross wages of \$5,993.
6. On September 17, 2015, the agency received earnings verification from the Petitioner's employer. The Petitioner's actual gross wages were reported as follows:

October, 2014	\$1,911.44
November, 2014	\$1,661.12
December, 2014	\$2,744.32
January, 2015	\$1,795.76
February, 2015	\$2,104.62
March, 2015	\$2,093.01
April, 2015	\$2,156.00
May, 2015	\$3,163.22
7. On July 15, 2016, the agency issued a Medicaid/BadgerCare/BadgerCare Plus Overpayment Notice to the Petitioner informing her that the agency intends to recover MA overissuances in the amount of \$753.95 for the period of December 30, 2014 – May 31, 2015 due to client error in failing to report earned income. The notice further informed her of the right to appeal the agency determination by filing a request for a hearing with the Division of Hearings and Appeals no later than August 29, 2016.
8. On October 4, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

An administrative law judge can rule on the merits of a case only if there is jurisdiction to do so. There is no jurisdiction if an appeal is not timely filed. In matters involving MA, including BC+, an appeal must be filed within 45 days of the date of the agency action. Wis. Stats., § 49.45. In this case, the Petitioner's appeal was filed 80 days after the agency action on July 15, 2016. Therefore, the appeal is not timely and

DHA does not have jurisdiction to rule on the merits of the case. As dicta, the agency produced evidence of the Petitioner's actual gross wages and demonstrated those wages were over the reporting income limit. The Petitioner did not produce sufficient evidence to rebut the agency's case. The agency seeks to recover the capitation payments made by the agency on behalf of the Petitioner during the overpayment period. I found no error in the agency's case.

CONCLUSIONS OF LAW

The Petitioner's appeal was not timely filed.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of January, 2017

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 31, 2017.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability